

Dispute Avoidance & Resolution



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Dispute Resolution

I) Your Government's Role

II) Resolution Tool Box

I) Your Government's Role

YES WE CAN:

- Provide assistance navigating China's legal system
- Provide a list of local attorneys
- Provide basic information on potentially applicable trade agreements and relevant Chinese business practices

NO WE CANNOT:

- Provide legal advice

II) Resolution Tool Box

Determine your objective

- How serious is this dispute?
- Do you want to maintain your commercial relationship with the counter-party?
- Do you want completely out?

Tools

- Negotiation
- Mediation
- Arbitration
- Litigation

II) Tool Box - Negotiation

Pros

- Cheap
- Can diffuse problem before it gets out of control
- Can preserve commercial relationship

Cons

- May not work
- Non-binding
- Perpetual negotiation

II) Tool Box - Mediation

Pros

- Can be informal or in the context of formal proceedings
- Relatively inexpensive
- Normally private
- Can preserve commercial relationship

Cons

- May not work
- Non-binding
- Often marks an escalation of the dispute

II) Tool Box - Arbitration

Arbitration

- At least 90% of commercial disputes that enter formal dispute resolution in China are resolved through arbitration
- Contractual in nature; must be in writing
- Formal, but often described as more like a "facilitated negotiation" than an adversarial proceeding
- Consideration of "principles of fairness and reasonableness"

II) Tool Box - Arbitration

Pros

- Binding
- Rules relatively clear and straight-forward
- Reasonable amount of party autonomy

Cons

- Must rely on litigation if no arbitration agreement or does not reflect clear intent to arbitrate
- No ad-hoc arbitration; institution must be clearly named
- May not be able to engage foreign counsel
- Can only appoint arbitrators from approved list
- Expensive

II) Tool Box - Arbitration

Local Arbitration Commissions

- Over 140 established in most major cities
- Private institutions in principle but closely tied to local governments
- No ability to appoint foreign arbitrators
- Originally viewed with skepticism, but over time, many have proved to be viable alternatives

II) Tool Box - Arbitration

CIETAC

- Has been one of the busiest arbitration centers in the world
- CIETAC as an institution plays an important role in proceedings
- Ability to appoint foreign arbitrators
- Allows parties to specify nationality of arbitrators in their arbitration agreements
- Areas of concern

II) Tool Box – Arbitration

Enforcement

- Most frequently cited difficulty of arbitration in China
- Enforcing an arbitral award is beyond the powers of the arbitration commission; must involve the courts
- Enforcement may be easier in major cities and with smaller awards
